

## **REMARKS**

### **REGARDING THE CLAIMS:**

Claims 11, 12, 15-19, and 21-46 are pending in the application. Claims 11, 12, 15-19, and 24 are allowed. Claims 21-23, and 25-46 have been finally rejected. No new matter is added. Applicant respectfully requests reconsideration and allowance of these finally rejected claims in view of the following remarks.<sup>1</sup>

### **STATUS OF AMENDMENTS:**

There were no after-final amendments. Thus, the claims are pending as they were amended in the May 13, 2008, Response to the December 13, 2007, Non-Final Office Action.

### **GROUNDS FOR REJECTION TO BE REVIEWED**

The obviousness rejections of all rejected pending claims are to be traversed by Applicant. Claims 21, 22, 25, and 28-33 are method claims directed to a method for communication between a central station and a remote mobile or stationary object; claims 23, and 26-27 are apparatus claims directed to a system for communication between a central station and a vehicle using transmitters and receivers; claims 34-36 are apparatus claims directed to a central station in communication with a remote communicating object; and claims 37-46 are another set of apparatus claims directed to a communicating object within the communication system. The Examiner has made two separate obviousness rejections, rejecting claims 20-23, 25, and 27-46 as one group and claim 26 separately. For purposes of this response, however, Applicant submits that method claims 21, 22, 25, and 28-33 stand or fall together and apparatus claims 23, 26-27, 34-36, and 37-46 stand or fall together, but with the exact same arguments applicable to both groups of claims. Additionally, claims 41-46 have been listed as being rejected

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<sup>1</sup> As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions by the Examiner in the Final Office Action or certain requirements that may be applicable to such rejections (e.g., assertions regarding dependent claims, whether a reference constitutes prior art, whether references are legally combinable for obviousness purposes) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

but without any stated basis by the Examiner. Therefore, Applicant traverses their rejection based upon the Examiner's lack of sufficient basis or alternatively based upon the same arguments applicable to both groups of claims.

## ARGUMENT

### Obviousness Rejection

Claims 20-23, and 25-46 stand rejected under 35 U.S.C. § 103(a) as obvious based on Timm et al., U.S. 5,572,204, in view of Nojima, U.S. 5,933,080, and further in view of Uhlik et al., U.S. 6,600,914.<sup>2</sup> <sup>3</sup> According to the Examiner, Timm discloses all features recited in the claims except "emergency assistance service preempts ongoing phone calls such that ongoing phone calls are interrupted in deference thereto," and the "transmitting and managing of at least one service like remote status information, malfunction diagnostics and maintenance as well as technical and emergency assistance" where "a conflict concerning simultaneous execution of several services during service subscription is handled automatically." However, according to the Examiner, Nojima and Uhlik disclose these features such that it would have been obvious to incorporate them into the system disclosed by Timm because the use thereof would "provide a means for insuring that an emergency call is always given priority and a communications channel" or to "ensure the service-based call gets through to the central station." Applicant traverses this rejection and requests that it be reversed because neither Timm nor the other cited references disclose what the Examiner contends they show. Therefore, the combination of references would not yield the claimed invention. Furthermore, the Examiner's analysis lacks any rational underpinning for the asserted combinations such that impermissible hindsight underlies the combination and other parts of the Examiner's analysis.

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<sup>2</sup> As noted above, claim 26 is rejected separately as obvious based on Timm/Nojima/Uhlik in further view of Hattori et al. Because claim 26 stands or falls with claims 23 and 27, the obviousness rejection of claim 26 will not be addressed separately.

<sup>3</sup> This is an error by the Examiner, as claim 20 has been cancelled.

**1) Timm Does Not Teach or Disclose Sleep, Standby, or First Execution Modes**

As noted above, an advantage of the system is the improved reliability of communications between an object and a central station. Integral to this reliability are the operations modes, specifically the claimed standby (W) or the second service execution (T2) modes. The sleep mode (S) is an operational mode where the object's unit is in a state of minimized power consumption. The standby mode (W) ensures that communication between an object and a central station is reliably made, preferably by cellular communication or in its absence by satellite communication. Activation in this mode is automatic and not just based on a condition, such as an airbag deployment. First and second service modes (Ti or T2) utilize service identifiers as part of the execution of various services in an automatic fashion and where such services are not limited to emergencies. None of these claimed embodiments are taught or disclosed by Timm.

As the Examiner has pointed out, Timm discloses four modes of operation that include a “power up”, “wait”, “activation, and “communication” modes. However, these operation modes do not disclose what the Examiner contends they show, and do not equate to the claimed sleep, standby and service execution modes of the invention. Contrary to the Examiners assertions, Timm’s “power up” mode is actually a “power on” mode that begins with a turning over of the ignition and culminates with a self fault test performed. It does not involve nor imply a stage of minimizing power consumption, as the mode is either off or on. (Timm at Column 3, lines 39-41). The “wait” mode performs a GPS update and does little more than wait for manual activation. (Timm at Column 4, lines 1-4). Primary “activation” mode is achieved by a manual switch activated by a user and involves only cellular transmission that is only attempted once. It has no alternative means of transmission so as to reliably ensure communication, and such activation is not always automatically attempted. (Timm at Column 4, lines 25-35, lines 50-55). Finally, Timm’s “communication” mode allows the emergency response to occur only via data or voice cellular transmission and does not involve other services or service identifiers to execute a non-emergency service. These are stark differences in operation that do not equate to the claimed sleep, stand by, and service execution modes of the application as described above.

Furthermore, Timm is directed strictly to an emergency response between a response center and a vehicle. (Timm at Column 1, lines 15-20). It is not concerned with ensuring reliable

communications, nor does it does address such communications and services to other remote objects, nor does it go beyond an emergency service to initiate other services using service identifiers within the communication. Its primary embodiment of emergency communication involves the manual activation of its transceiver by the user, and does not initiate a communication link which is attempted automatically. (Timm at Column 4, lines 25-34, and Fig. 2, 40).

In attempted rebuttal, the Examiner has asserted that Timm teaches an “automatic periodic call-in (#39)” and a “Wake-up Control (#43)” that disclose the claimed modes. However, step (#43) does not involve power conservation of an object but rather involves the turning-on and control of only the cellular transceiver as all other components are always powered. (Timm at Column 4, lines 39-41). This can hardly qualify as a minimized power state for an object’s unit. Further, Timm’s step (#39) is not part of the operating modes “wait” or “activation”, but simply verifies an active account for the vehicle and does so only once bi-annually. It does not automate the emergency response communication or service because the device of Timm is incapable of automatic service activation. (Timm at Column 3, lines 59-63 and Fig. 2, 39).

These assertions by the Examiner regarding the claimed operational modes are troubling for two reasons. First, the assertions are technically incorrect, as explained above. (The Examiner is clearly straining to make the reference match the invention.) Second, the assertions miss the operating principle of Applicant’s invention and thus evidence a lack of understanding of the invention, the cited reference Timm, or both.

## **2) Nojima Does Not Teach or Disclose Priority and Management of Several Services**

As described earlier, an advantage of the claimed system and methods is the capacity for transmission and management of services between a remote object and a station. An important aspect of this management is the resolving of conflicting service executions among available services. Prioritizing such services is a part of the claimed transmitting and managing of services. The Examiner has insisted that Nojima teaches such prioritization of services and asserts this to be obvious to one skilled in the art so as to provide a means for insuring that “an

emergency call is always given priority and a communications channel.” However, Nojima does not teach nor disclose the claimed “each service has a priority value assigned thereto for use in said automatic resolution of conflict.” Nojima involves the use of a contact list such that in the event of an emergency, certain emergency contact numbers will be called by a response center ahead of other contact numbers. (Nojima at Column 3, lines 37-40 and Abstract). The system of Nojima is strictly designed for the prioritizing of who is to be contacted and only as it involves emergencies of a vehicle. Nojima does not disclose nor allude to the preempting of a vehicle’s cellular transmissions nor how a vehicle’s phone is to be used. In fact, the phone of Nojima is not even required for emergency operation, as Mayday communication occurs via a two-way radio device (22). (Nojima at Column 5, lines 10-13 and Column 3, lines 44-46).

As part of his rebuttal, the Examiner erroneously concluded that a system having multiple communication means (as in the claimed invention) could simultaneously handle various services and would have no need to prioritize such services. However, this erroneously assumes that both communication means will always work simultaneously. The need to resolve conflicting service executions and the goal of reliable communication within the system warrants a priority value of services which does not equate to a priority list of contacts. Such assumptions illustrate that the Examiner does not appreciate the design differences and complexities between a system for determining service need and management of several services to that of a simple priority contact list used during an emergency.

### **3) Uhlik Does Not Teach or Disclose Priority and Management of Several Services**

As with Nojima, the Examiner has insisted that Uhlik also teaches the prioritization of services and asserts this to be obvious to one skilled in the art so as to provide a means for insuring that “an emergency call is always given priority and a communications channel.” However, Uhlik does not teach nor disclose the claimed “wherein a conflict concerning simultaneous execution of several services during service subscription is handled automatically by assigning and affecting a priority to each service and deactivating any services with a minor priority than the service with a first priority.” Uhlik relates to a wireless local loop system that can allocate a communication channel to a unit so as to complete an emergency call. The system of Uhlik determines if an emergency call is attempted and in response a base station allocates a

communication channel for emergency call completion. (Uhlik at Abstract and Column 3, lines 14-20). Uhlik does not disclose nor allude to the prioritizing of several services or their preemption. It simply provides a communication channel once it receives an attempted emergency call even if this requires the preempting of another channel in its network. (Uhlik at Column 3, lines 14-20).

As part of his rebuttal relating to Uhlik, the Examiner has concluded that the optional preempting carried out in Uhlik is somehow identical to the claimed preemption of services or ongoing calls of the invention. This conclusion is simply erroneous. Applicant's claims involve the preemption of non-emergency use of an objects transceiver so as to initiate an emergency call. The disclosure of Uhlik involves preemptive use of a communication channel so as to provide a channel for completion of an emergency call. Uhlik requires that an emergency call be made prior to channel allocation in order for any preemption to occur. Applicant's claims do not involve a phone network's channel allocation; rather they involve the freeing-up of an object's transceiver to initiate the call which has no control over a networks subsequent channel allocation. Equating the two preemptive measures, as the Examiner has, is simply erroneous. Again, an important aspect of the claimed managing of conflicting service executions is the prioritizing and preemption of these available services. None of this is disclosed nor taught by Uhlik or any of the other cited references.

### **No Rational Underpinning for Asserted Combination**

Aside the factual issues of whether the cited references disclose the claim-recited operational modes and management of several services, Applicants submit that the Examiner's analysis is legally insufficient to support a *prima facie* case of obviousness. As the Supreme Court reiterated in KSR, "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." See KSR Int'l Co. v. Teleflex Inc., 550 U.S. \_\_\_\_ (2007), slip op. at 14, citing In re Kahn, 441 F. 3d 977, 988 (Fed. Cir. 2006). In this case, the Examiner has failed to provide the requisite "rational underpinning" for the proposed combination.

### **1) Secondary References are Non-Analogous Art**

In order for references to be properly combinable, they must be from analogous fields of endeavor. See, for example, M.P.E.P. § 2141.01(a). If a reference is not “one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his or her invention as a whole” (*id.*, emphasis added), then it is non-analogous art which does not support a *prima facie* case of obviousness. Applicants submit that that is the case here.

As explained above, the present invention is directed to the communication between a central station and a remote mobile or stationary object such that communication reliability, and the transmission and management of several services are all improved. Nojima and Uhlik, on the other hand, are directed to a prioritized contact list and the channel allocation used in a telecommunication network, respectively. In considering the invention as a whole and its essential technical contribution, one skilled in the art would be hard pressed to consider either the contact list of Nojima or the channel allocation scheme of Uhlik as logically dealing with the matter of improved service management and communication reliability between remote objects and a station. The difference in the two references is apparent in that one relates to the administration of a communication conduit while the other relates to preferred contacts to be informed, neither of which would logically command itself to the attention of one skilled in the art. To assert, as the Examiner has, that the claimed concepts and motivation to combine are found in the prior art is to ignore the complexities and considerations in designing a system and method for determining need and management of several services while ensuring a reliable communication link between a station and a remote object. Considerations which include, for example, the coordination of modules, the integration of different communication means and their interoperability, the minimizing of unit power consumption, the selection of various services, their management and transmission, the resolution of simultaneous service executions; etc. Thus, Nojima and Uhlik are not directed to analogous fields of endeavor. Accordingly, the notion that the Nojima contact list and the Uhlik channel allocation would have been incorporated into Timm’s vehicle emergency message system simply because the cited references are readily “modifiable,” simply does not exhibit the rational underpinning necessary

for proposed combination.

## **2) The Rejection Is Based on Impermissible Hindsight**

Viewed through the lens of this analysis, it becomes clear that the rejection is predicated on nothing more than hindsight-based reconstruction using Applicants' claims to pick and choose references to "bolt together." While KSR may have relaxed the standards for what an Examiner must show to support an obviousness rejection, it affirmed the impropriety of such an approach to an obviousness analysis. See KSR, supra, slip op. at 17 ("[a] factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.").

In short, the rejections based on Timm in view of Nojima, Uhlik and Hattori do not factually or legally support a *prima facie* case of obviousness, and the Examiner's conclusion of obviousness as to all pending rejected claims should be reversed. In view of the comments above, it is respectfully requested that all rejections be withdrawn and a Notice of Allowance issue with respect to all currently pending claims.

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The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Attorney Docket No.: 7589.033.PCUS00.

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